IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J. CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 6852 of 2004

Between:

1. State of Andhra Pradesh, rep. by its

Secretary to Government, Education

Department, Secretariat, Hyderabad.

2. District Educational Officer, Medak at

Sangareddy.

3. The Head Mistress, Government Boys

High School, Sangareddy, Medak Dist.

..... PETITIONERS

AND

Amjada Begum w/o Younus Ghori,

School Assistant in Arts,

Government Boys High School,

Sangareddy, Medak District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or Certiorari or any other appropriate Writ, order or direction, after calling for the records relating to and connected with the judgment of the Hon'ble A.P. Administrative Tribunal, dated 9.7.2003 in O.A.No. 3340/2002 with M.A.No. 5189/2002 and quash the same as illegal, arbitrary and contrary to law and facts of the case.

For the Petitioners: Government Pleader for School Education

For the Respondent : Mr. S.Sharath Kumar, Advocate

The Court Made the Following

:: ORDER ::

(Per Hon'ble Sri Justice G. Raghuram)

The State Government and two authorities of the Education Department of the State have filed this writ petition aggrieved by the order of the A.P. Administrative Tribunal (the Tribunal) dated 9.7.2003 in OA No. 3340 of 2002 and MA No. 5189 of 2002. The sole respondent herein was the applicant and the writ petitioners the respondents, in the OA.

The applicant is a School Assistant in Government High School. In G.O. Ms. No. 49, Education Department, dated 26.2.1998 the Government issued instructions for rationalisation of teaching staff. As a consequence of the rationalisation process 4 posts of School Assistants and 3 posts of Secondary Grade Assistants out of the 12 posts in Government High School, Sangareddy, Medak District, where the applicant was working as a School Assistant, were identified as surplus posts. The District Educational Officer, Medak at Sangareddy-the 2nd petitioner (the DEO) issued proceedings dated 31.7.98 transferring the applicant along with the post she was holding (which was identified as one of the surplus posts) to the High School,

Ranjole, from Sangareddy. She was relieved from the Sangareddy post on 21.8.1998. The applicant, however did not join at Ranjole, but filed W.P. No.25291/98 before this court, nothwithstanding that by the judgment dated 18.3.1997 in ***L. Chandrakumar vs Union of India ()*** a Constitution Bench of the Supreme Court had declared the law that in respect of matters which could be heard by Tribunals constituted *inter alia* under The Administrative Tribunals Act 1985, such Tribunals shall be the only forum of first instance and no litigant whose case could be adjudicated by such Tribunals could approach the High Courts for relief directly u/Art. 226 of the Constitution. The applicant sought suspension of the order of the D.E.O. dated 31.7.98. This court by the order dated 9.9.98 granted interim suspension of the order of the D.E.O dated 31.7.98. As the order was not implemented, she filed CC No.1693/98. By the judgment dated 4.10.99 this court disposed of W.P. No. 25291/98 and CC No.1693, as under:

" The writ petition has been filed questioning the order of transfer dated 31.7.98. The petitioner is working as a teacher in the Government High School (Boys), Sangareddy. She is a teacher in Urdu discipline. She was transferred to Ranjole. The said order is questioned on the ground that her husband has been brought to Sangareddy because of the policy decision of the Government to keep both the wife and the husband at the same place, but it is violated by transferring the petitioner to a far-off place of 50 kms. The other ground to challenge is medical ground as it is stated that she is suffering from brain tumour and needs medication at the head quarters of the District ie., Sangareddy because such medical facility is not there in the remote centres.

Interim suspension of the said order was granted by this Court when this court was admitting the writ petition challenging the constitutional vires of the provisions of Administrative Tribunals Act, 1985. Complaint is, that the said order has not been complied with and, as such, Contempt Case No. 1697/98 has been filed. The writ petition was also directed to be posted along with the contempt case and this is how we have heard both the contempt case and the writ petition.

After obtaining the instructions as to whether the petitioner can be accommodated nearer to the place, now the learned Government Pleader has come up with a proposal that the petitioner can be posted to Sadasivapet. But, it is not acceptable to the petitioner.

Having regard to the fact that the petitioner has to approach the Tribunal in order to exhaust the alternative remedy as propounded by the Supreme Court in L.CHANDRAKUMAR v. UNION OF INDIA, AIR 1997 SC 1125, the petitioner is directed to approach the Tribunal. The learned counsel Mr. Sharat Kumar appearing for the petitioner, before us the order dated

21.12.1993 of the A.P. Administrative Tribunal in OA No.5243/93. That order has to be cited before the Tribunal, enabling the petitioner to approach the Tribunal.

The time of 15 days from today is granted to the petitioner to approach the Tribunal and meanwhile the interim orders which were granted by this Court will continue in operation for the said period of 15 days.

If the petitioner files O.A. and also seeks for interim prayer, the said plea of interim prayer will be considered by the Tribunal on its own merits and without being influenced by the interim orders passed by this Court."

Thereafter the applicant filed OA No.5984/99 before the A.P. Administrative Tribunal again seeking invalidation of the proceedings dated 31.7.98. As the Tribunal issued a notice but did not grant an *ex parte* interim order, the applicant filed W.P.No. 21299/99. This writ petition was disposed of by the order of a Division Bench of this court dated 15.10.99 directing the Tribunal to dispose of the applicant's application for interim relief within 15 days and directing maintenance of *status quo* as on the date of the order with regard to the applicant's transfer.

The Tribunal by the order dated 9.11.99 (in OA No.5984/99) declined to granted an interim order on the ground that as the applicant had been relieved on 21.8.98 by the Head Master of the Sangareddy High School and as another individual had joined the post, it did not consider it a fit case for grant of interim order.

Assailing the above order the applicant filed W.P. No.25616/99 and also sought invalidation of the order of the DEO dated 31.7.98. This court on 17.12.99 granted interim suspension of the DEO's order dated 31.7.98. As the applicant was not continued at Sangareddy High School, she filed CC No.65 of 2000. The writ petitioners filed an application seeking vacation of the interim order dated 17.12.99. This application was disposed of by this court by the order dated 27.4.2000. This court directed the State and its authorities "in extraordinary circumstances and purely on humanitarian grounds", to transfer the applicant to the Government High School for Boys, Sangareddy, by transferring the other individual Ms. Shahnaz

Fathima to the Government High School for Boys at Sadasivpet, with effect from the academic year commencing in June 2000. The writ petition itself (W.P. 25616/99) and the CC No.65 of 2000 were disposed of on 4.8.2000 in view of the fact that the applicant was accommodated at the Government High School for Boys, Sangareddy, pursuant to the order of this court. The applicant was given posting at Sangareddy by the proceedings of the D.E.O., dated 12.6.2000.

The applicant submitted a representation dated 28.8.2000 for arrears of salary from September 1998 to June 2000. There being no response, she filed OA No.6776 of 2000 before the Tribunal. The Tribunal disposed of the OA at the admission stage by the order dated 7.11.2000 directing the DEO to dispose of the applicant's representation dated 28.8.2000 expeditiously.

Thereupon the DEO issued an order dated 22.2.2001 rejecting the applicant's plea for arrears of salary. She thereupon filed OA No. 2261 of 2001 before the Tribunal for payment of full salary from September 1998 to June 2000, treating the said period as compulsory wait period and also to accord her the benefits of increments and fixation of pay as though she was continuously in service without interruption. OA No.2261/01 was disposed of by the Tribunal on 17.4.2001, directing the applicant to file a fresh representation setting out the basis of her claim to the benefits under a government memo dated 28.3.198 and also directed the DEO to examine the applicant's representation in accordance with the rules as also the memo dated 28.3.1998.

The applicant then submitted a representation dated 11.5.2001, on which the DEO addressed the Commissioner and Director of School Education by a letter dated 9.1.2002, for guidance.

The applicant filed another OA No. 3340 of 2002 for arrears of salary and along with the OA she filed MA No. 5189 of 2002 for a direction for payment of at least half of the amount she was entitled to. The OA and the MA were disposed of by the order impugned herein. Before

the Tribunal the defence of the Government (writ petitioners herein) was that as the applicant did not work either at the old station (Sangareddy) or at the new station (Ranjole) though she was relieved on 21.8.98 and, therefore, she was not entitled for salary in view of the provisions of FR-17.

By the order impugned, the Tribunal directed the period September 1998 to June 2000 should be regularised as compulsory wait for posting in accordance with the instructions in Government memo dated 28.3.98 and as the various courts had directed the continuance of the applicant at Sangareddy. The Tribunal also directed that the writ petitioners should consider the claim of the applicant for regularisation of her absence from September 1998 to June 2000 as per the directions of the Tribunal in OA No. 2261/01 dated 17.4.2001 and in accordance with the circular memo dated 28.3.98 and that the writ petitioners should pay the applicant the salary for the period by treating her absence as compulsory wait for posting.

It requires to be noticed that this court by the order dt 4.8.2000 disposed of W.P.No.25616/99 and CC No.65/00. It may be recalled that in W.P.No. 25616/99 (filed against the Tribunal's order dt 9.11.99 declining to grant stay) this court had granted an interim order dt 17.12.99 suspending the DEO's order dt 31.7.98. By the order dt 4.8.2000 this court recorded as under:

" … The order of this Court was not complied with. Therefore, the petitioner herein filed C.C.No. 65/2000. Now it is represented that the interim order is complied with. Therefore, nothing remains in the writ petition.

At this stage, the learned counsel Mr. D.Linga Rao appearing on behalf of respondent No.5 submitted that there is an existing vacancy in Zill Parishad High School at Sangareddy. It is further brought to our notice that in view of the order passed in W.P.M.P.No. 32315/99, the petitioner was accommodated and the respondent No.5 was posted to a School at Sadashivapet, which causes some inconvenience to her, and therefore prayed that the respondent No.5 be accommodated in Zilla Parishad Girls' High School at Sangareddy, as their exists a clear vacancy.

Considering the prayer made by the respondent No.5, we direct the

respondent No.3 to consider the prayer made by the respondent No.5 for accommodating her in Zilla Parishad Girls High School at Sangareddy, if it is not going to cause any inconvenience to the administration."

The validity of the order of the Tribunal dt 9.11.99 which was the subject matter of the challenge in W.P.No.25616/99 was not adjudicated by this court.

Be that as it may. As W.P. No.25616/99 was filed against the order of the Tribunal dt 9.11.99 declining grant of stay, this court had the jurisdiction to entertain the petitioner's grievance as her grievance was initially processed by the Tribunal in accordance with law declared in *Chandrakumar*'s case. The interim order granted by this court dt 17.12.99 (in W.P. No.25616/99) whereby the DEO's order dt 31.7.98 was suspended, was thus a wholly competent exercise of jurisdiction by this court qua the law declared in *Chandrakaumar*'s case.

Earlier the applicant had filed W.P.NO. 25291/98 directly in this court challenging the order of the DEO dated 31.7.98 without first approaching the Tribunal for relief. The writ petition was filed after the law was declared in *Chandrakumar*'s case. In the said writ petition an interim suspension was granted on 9.9.98 by this court and the writ petition itself along with CC No.1693/98 was disposed off on 4.10.99 directing the applicant to approach the Tribunal in view of *Chandrakumar*. While rightly declining exercise of jurisdiction in the first instance, this court however observed that the earlier interim order dt 9.9.98 in the writ petition would continue for 15 days within which time the applicant was directed to approach the Tribunal.

The Supreme Court in *Chandrakumar*'s case declared that a Tribunal constituted or created under Art. 323A and B of the Constitution will legitimately continue to act as courts of first instance in respect of areas of law for which they have been constituted and that it would not be open to a litigant to directly approach the High Courts even in cases where a statute is challenged on the ground of *vires* (except where the legislation which creates the particular tribunal is itself

challenged), by overlooking the jurisdiction of the Tribunal concerned. To overcome the bar on the exercise of jurisdiction of this court in first instance, the applicant filed W.P. No.25291/98 claiming the relief as under:

> *" … calling for the records relating to and connected with the proceedings in Rc.No.3884/B1/97, dated 31.7.1998 of the 3rd respondent and the consequential proceedings dated 21.8.98 of the 4th respondent and quash the same with a direction to continue the petitioner in the 4th respondent school if necessary by declaring the Sections 5,6,8,12,18 and 36 of the Administrative Tribunals Act 1995, as ultra vires, unconstitutional and violative of basic structure."*

The challenge to some of the provisions of the Administrative Tribunals Act 1985 was presented as a fig leaf and ruse to circumvent the declaration of law in *Chandrakumar*'s case and to avoid approaching the Tribunal in the first instance as was the legal requirement post-*Chandrakumar*. The challenge to the provisions of the Administrative Tribunals act 1985 was never pursued in the writ petition. This court did not adjudicate upon the vires of the provisions challenged, either. Instead the petitioner was directed to approach the Tribunal in view of *Chandrakumar*.(in W.P.No. 25291 of 1998).

In the above circumstances the grant of the interim order dt 9.9.98 or the direction dt 4.10.99 while disposing of W.P.No. 25291/98, that the interim suspension granted on 9.9.98 would be operative for 15 days till the applicant approached the Tribunal, were orders that were incompetent in view of the law declared in *Chandrakumar*'s case. However as the order granted by this court on 17.12.99, suspending the order of the DEO dt 31.7.98 (in W.P.25616/99) was granted in a writ petition filed challenging the refusal of the Tribunal to grant interim order, the jurisdiction exercised by this court was an exercise not in the first instance, but in judicial review of the order of refusal by the Tribunal to exercise jurisdiction. The petitioner is thus entitled both for regularisation of the period of her absence and for payment of salary etc., only for the period 17.12.99 to 12.6.2000, on which latter date the DEO issued orders posting the applicant to the Government High

School for Boys, Sangareddy.

In view of the above analysis the order of the A.P. Administrative Tribunal dt 9.7.2003 cannot be sustained in its entirety. It is therefore set aside to extent the authorities are directed to regularise the service of the applicant during the period of her absence from September 1998 to June 2000 as compulsory wait for posting. The writ petitioners are obligated to regularise the period of absence of the applicant from 17.12.99 to 12.6.2000 by treating the said period as compulsory wait for posting and the applicant shall be entitled to salary, allowances and all other incidental and consequential benefits on such regularisation of the period.

Pursuant to the order of the DEO dt 31.7.1998 the applicant was relieved from the Sangareddy High School on 21.8.98. Therefore her absence from 21.8.98 to 17.12.1999 would require to be determined by the DEO in accordance with law. For this period as there was no competent and legal order of the judicial branch, no direction could be issued directing the writ petitioners, in particular the D.E.O., to treat the said period in a particular manner. Such a decision is within the discretion of the DEO. We, therefore, direct the 2nd petitioner herein-the DEO to take a decision with regard to treatment of the period of the applicant's absence from 21.8.1998 to 17.12.1998, in accordance with law. We hope and trust that having regard to the peculiar facts and circumstances of this case, in arriving at the decision the DEO will exercise a benign discretion unprejudiced by the litigative propensities of the applicant.

The writ petition is disposed of as above. No costs.

Date: 08-09-2004 ----------

Pvsn Justice J. Chelameswar

Justice G. Raghuram

To

1. The Secretary to Government, Education

Department, State of Andhra Pradesh,

Secretariat, Hyderabad.

2. The District Educational Officer, Medak at

Sangareddy.

3. The Head Mistress, Government Boys

High School, Sangareddy, Medak Dist.

4. Government Pleader for School Education, High Court Buildings,

Hyderabad, (OUT)

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